

Appl. No. 09/895,027
Atty. Docket No. 8610
Amdt. dated April 25, 2006
Reply to Office Action of January 25, 2006
Customer No. 27752

REMARKS

Claim Status

Claims 1 – 3 and 5 - 21 are pending in the present application. No additional claims fee is believed to be due.

Claim 1 has been amended to correct the inclusion of surplusage. The phrases “wherein the first layer” and “of the substrate” have been deleted. Claim 1 has been amended to correct a typographical mistake. The term “releasbly” has been replaced with “releasably.”

These changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

REJECTIONS UNDER 35 USC §102

Claims 1-21 are rejected under 35 U.S.C. § 102(a) as being anticipated by WO 00/64502 to Krzysik et al. (hereafter “Krzysik”). Applicant notes that the Office in the Office Action of June 29, 2005, rejected the present claims as being unpatentable under 35 U.S.C. §103(a) in light of Krzysik. The Office now asserts the presently pending claims are anticipated by Krzysik. In support of the rejection, the Office states:

WO discloses an absorbent article having a liquid impermeable outer surface, a middle absorbent portion and a top liquid permeable bodyside liner facing the wearer . . . the bodyside liner includes a lotion formulation on the outer bodyfacing surface and is comprised of wax, emollient and a viscosity enhancer The emollient . . . includes fatty alcohols, lanolin or lanolin derivatives, petroleum based oils (page 13, lines 22-35). WO discloses waxes for immobilizing the emollient and reduce its tendency to migrate (page 14), viscosity enhancers such as talc, silica, cellulose and modified cellulose derivatives and other skin treating compounds such as glycerin, zinc oxide, etc (page 15 and 16).

With respect to the claimed thickness of the beneficial components on the porous substrate i.e., 2.2 times more in the top third portion (0 to Z/3) of the porous substrate than the bottom 2/3 portions WO does not disclose the ratio. Thus, instant claims requires more beneficial component in the top 1/3 of the substrate, which includes the thickness of 0 i.e., on the top most part of the substrate. WO discloses that the lotion be applied to the bodyside liner at 0.05-100 mg/sq. cm, which in other words the top most side of the body side line and is within the claimed limitations. Further, instant claims require that the beneficial component with a first and second layer, wherein the composition of the first layer different from the first layer. Instant claims can be interpreted as two different layers of the active agent one on top of the other or one next to the other. WO discloses

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the layering of beneficial agent as stripes, which reads on the latter interpretation.

Further, WO states that a z-direction migration loss test shows that the migration of the lotion on the absorbent article is very low. Further, WO discloses applying the lotions to discreet areas as stripes as full length or a portion of the article and further in an add-on level, including the claimed steps of applying the component and solidifying (page 19). WO also discloses deposition of wax, emollients and other viscosity enhancers such as celluloses, silica, petrolatum, aloe etc., all of which read on instant hydrophilic components, along with emollients and wax (hydrophobic) in the lotion formulation. WO suggests that the lotion formulation be applied to the entire body face or may be applied selectively to particular sections, so as to provide greater lubricity to such sections and can be applied in stripes (page 18, lines 26-33) and suggests that the lotion formulation leave a greater percentage of the added formulation on the bodyfacing surface of the liner where it can contact and transfer to the wearer's skin to provide a benefit (page 3, lines 1-7). Thus, WO anticipates the instant claims.

Applicant traverses the rejection for the reasons presented on a claim by claim basis below. However, the underlying rationale for traversal is because the Office has failed to present a reference that describes each and every limitation as set forth in Applicant's claims. *See Vedegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).

Claim 1 – Krzysik fails to teach or suggest several limitations presented in Claim 1. First, Krzysik fails to teach or suggest the limitation “wherein the beneficial component comprises at least a first layer and a second layer having a different composition from the first layer.” The Office states, “Instant claims can be interpreted as two different layers of the active agent one on top of the other or one next to the other. WO discloses the layering of beneficial agent as stripes, which reads on the latter interpretation.” On page 17, line 5-9, of the specification, Applicant states:

As used herein to describe the layer embodiments of this section, the term “**first layer**” means that this layer of beneficial component is disposed on at least a portion of the contacting surface of the substrate. As used herein to describe the layer embodiments of this section, the term “**second layer**” means that this layer of beneficial component is disposed on at least a portion of the first layer.

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By definition, the "second layer" is disposed on at least a portion of the first layer. The Office's interpretation that layers may be interpreted as "one next to the other" is clearly erroneous in light of the specification. The Office has failed to present a reference teaching the layering (*i.e.*, second layer disposed on at least a portion of the first layer) as recited in Claim 1.

Second, in the response submitted on October 31, 2005, Claim 1 was amended to recite "wherein the first layer comprises at least about 5%, by weight, of the beneficial component." The Office failed to address whether Krzysik teaches or suggests this limitation. As a result, the Office has failed to present a reference teaching each and every limitation of Claim 1.

Third, the Office has failed to teach the limitation where "the ratio of the quantity of the beneficial component present on or within the thickness between 0 and $Z/3$ of the substrate is at least about 2.2 times the quantity of the component within the thickness between $2Z/3$ and Z of the substrate until the time of the use of the article." The Office concedes, "WO does not disclose the ratio," but the Office states, "WO discloses that the lotion be applied to the bodyside liner at 0.05-100 mg/sq. cm, which in other words the top most side of the body side line and is within the claimed limitations." However, the Office has failed to point to a passage in Krzysik where the ratio is maintained "until the time of the use of the article." Applicant has already argued that Krzysik does not show that the lotion will remain on the top of the bodyside liner. *See Declaration of Olaf Isele* submitted October 31, 2005, page 2, paragraph 3. As a result, the Office has failed to present a reference teaching each and every limitation of Claim 1.

Claim 5 – The Office states, "WO also teaches deposition of wax, emollients and other viscosity enhancers such as celluloses, silica, petrolatum, aloe etc., all of which read on instant hydrophilic components, along with emollients and wax (hydrophobic) in the lotion formulation." While Krzysik discloses a variety of materials with varying hydrophilic/hydrophobic properties, Krzysik does not teach or suggest one layer being relatively hydrophilic and one layer being relatively hydrophobic. Since Claim 5 is dependent from Claim 1, Claim 5 should be construed such that the second layer is disposed on the first layer. The Office has failed to present a reference teaching the limitation of Claim 5.

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Claim 8 The Office has failed to present a passage in Krzysik teaching that the article is selected from "buffs, bandages, mops, cloths, wipes, sponges, or other flexible dispensing means intended for use on inanimate objects." As a result, the Office has failed to present a reference teaching the limitation of Claim 8.

Claim 9 – As originally discussed in regard to Claim 1, the Office states, "Instant claims can be interpreted as two different layers of the active agent one on top of the other or one next to the other. WO discloses the layering of beneficial agent as stripes, which reads on the latter interpretation." Claim 9 clearly states, "the second layer is disposed on the first layer." The plain language of the claim clearly refutes the Office's construction that layers mean "one next to the other."

Furthermore, the Office failed to address whether Krzysik teaches or suggests the limitation where "the first layer makes up between about 5% and about 95% of the beneficial component." The Office has failed to present a reference teaching each and every limitation of Claim 9.

Claim 11 As with Claim 5, while Krzysik discloses a variety of materials with varying hydrophilic/hydrophobic properties, Krzysik does not teach or suggest one layer being relatively hydrophilic and one layer being relatively hydrophobic. Since Claim 11 is dependent from Claim 9, Claim 11 will also require that the second layer is disposed on the first layer. The Office has failed to present a reference teaching the limitation of Claim 11.

Claim 13 The Office did not address this claim or the limitations therein. Therefore, the Office has failed to provide a reference teaching an article comprising a third layer disposed on at least a portion of the second layer.

Claim 14 The Office did not address this claim or the limitations therein. Therefore, the Office has failed to provide a reference teaching an article wherein the difference between the solubility parameters between the layer and a second layer is less than or equal to two.

Claim 16 – As originally discussed in regard to Claim 1, the Office states, "Instant claims can be interpreted as two different layers of the active agent one on top of the other or one next to the other. WO discloses the layering of beneficial agent as stripes, which reads on the latter interpretation." Claim 16 clearly states, "applying a

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second layer of a relatively hydrophilic component on the relatively hydrophilic component." The "relatively hydrophilic component" is the first layer. The plain language of the claim clearly refutes the Office's construction that layers mean "one next to the other."

Furthermore, the Office has not addressed the limitation of "allowing the first layer and second layer to simultaneously cool on the substrate without the formation of an emulsion."

Claim 20 The Office did not address this claim or the limitations therein. Therefore, the Office fails to provide a reference teaching a hydrophobic component that comprises a volatile intermediary.

Claim 21 The Office did not address this claim or the limitations therein. Therefore, the Office fails to provide a reference teaching a first layer comprising a volatile base lotion such that the first layer dissipates subsequent to application of the second layer.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 U.S.C. § 102(a). Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1 - 3 and 5- 21 is respectfully requested.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By


Eric T. Addington

Registration No. 52,403
(513) 634-1602

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Customer No. 27752